

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EUGENE KESSLER, individually and
derivatively on behalf of SALEM VEGAS, L.P.,

Plaintiff,

vs.

ANTHONY GUANCI,

Defendant.

Case No. 2:12-cv-01892-GMN-CWH

ORDER

This matter is before the Court on Plaintiff's proposed Discovery Plan and Scheduling Order (#20), filed January 11, 2013.

The proposed discovery plan does not comply with the Local Rules, which provide that “[c]ounsel for plaintiff shall initiate the scheduling of the Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the first defendant answer or otherwise appears. Fourteen (14) days after the mandatory Fed. R. Civ. P. 26(f) conference, the parties shall submit a stipulated discovery plan and scheduling order.” *See* LR 26-1(d). It does not appear that Plaintiff’s counsel has initiated the Rule 26(f) conference even though both named defendants have appeared in this action. Counsel indicates the reason for the failure is a prospective substitution of counsel being filed on behalf of Defendant Guanci. A prospective motion or stipulation to substitute counsel is not a sufficient reason for counsel not to initiate and conduct the Rule 26(f) conference. Until the Court enters an order or approves a stipulation to substitute counsel, Defendant Guanci’s counsel must participate in the conference. *See* LR IA 10-6(b) and (c) (requiring that any motion to withdraw or stipulation to substitute must be by leave of Court). The failure or refusal to participate in framing a discovery plan can subject the failing party to sanctions under Rule 37(f).

Moreover, the proposed discovery plan does not contain “a statement of the reasons why longer or different time periods should apply to the case.” *See* LR 26-1(d). Nor does the proposed

1 plan set forth the correct calculation of the time in which extensions of scheduled deadlines should
2 be requested. *See* LR 26-4 (“All motions or stipulations to extend a deadline set forth in a
3 discovery plan shall be received by the Court no later than twenty-one (21) days before the
4 expiration of the subject deadline.”).

5 Based on the foregoing and good cause appearing therefore,

6 **IT IS HEREBY ORDERED** that Plaintiff’s proposed Discovery Plan and Scheduling
7 Order (#20) is **denied**. Plaintiff’s counsel is instructed to initiate the Rule 26(f) scheduling
8 conference and file a stipulated discovery plan and scheduling order by January 29, 2013.

9 DATED this 16th day of January, 2013.

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13 **C.W. Hoffman, Jr.**
14 **United States Magistrate Judge**
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